

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In re:)
)
FAITH CARE LLC,)
)
Debtor.) Case No. 21-30432-LKG
)
UNITED STATES DEPARTMENT OF) Chapter 7
HOUSING AND URBAN DEVELOPMENT,)
)
Creditor,)
)
vs.)
)
DONALD SAMSON,)
CHAPTER 7 TRUSTEE,)
)
Respondent.)
)

MOTION FOR RELIEF FROM STAY AND ABANDONMENT

NOW COMES the United States of America for the United States Department of Housing and Urban Development (*hereinafter "HUD"*), by and through its attorney, Steven D. Weinhoeft, United States Attorney for the Southern District of Illinois and Adam Hanna, Assistant United States Attorney, and hereby moves this Court pursuant to Sections 362(d) of the Bankruptcy Code for an order granting relief from the stay imposed by Sections 362(a) of the Bankruptcy Code and abandonment of the property by the Trustee, and states as follows:

1. The Debtor is the owner of a combined skilled nursing and assisted living facility located in Highland, Illinois, commonly known as "Faith Care" (*hereinafter "the Facility"*).
2. The Facility was originally mortgaged to Gershman Investment Corp. ("Gershman") to secure an original principal amount of \$13,103,800, and HUD insured mortgage debt against default pursuant to Section 232 of the National Housing Act, 12 U.S.C. §1715w.

Gershman assigned the mortgage and the secured debt to Greystone Funding Company LLC (*hereinafter* “Greystone”) effective on or about November 1, 2020, which remained insured against default by HUD. *See* Exhibits A and B, Mortgage and Assignment of Mortgage.

3. To further secure the HUD-insured Greystone mortgage debt, the Debtor executed a Security Agreement dated July 1, 2012, granting a security interest in its collateral, including but not limited to fixtures, furniture, equipment, licenses, rents, leases, tangible personal property, and accounts receivable, to the mortgagee to secure the timely payment and performance of the Debtor’s obligations. *See* Exhibit C, Security Agreement.

4. Pursuant to the Security Agreement and to perfect the interest in the deposit accounts, the Debtor executed a Deposit Account Control Agreement (“DACA”) with the mortgagee and the holder of the Facility’s deposit accounts, The Bank of Edwardsville. *See* Exhibit D, redacted DACA. On information and belief, The Bank of Edwardsville was acquired by and is now known as Busey Bank.

5. Pursuant to the Security Agreement and to perfect the interest in the rest of the Debtor’s collateral, the mortgagee filed a UCC Financing Statement with the Recorder of Deeds for the County of Madison, Illinois, document 2012R31466, continued by document 2017R19094, and with the Secretary of State of Illinois, document 17456474, continued by document number 09485811. *See* Exhibits E1- E2.

6. On or about September 1, 2019, the Debtor ceased making mortgage payments to Greystone, the mortgagee, and the Debtor made no mortgage payments to Greystone subsequent to that date. *See* Exhibit F, Application for Mortgage Insurance.

7. On April 9, 2021, the Debtor issued a notice of closure to the State of Illinois which was acknowledged and accepted by letter dated April 13, 2021. *See* Exhibit G. On information and

belief, the Debtor relocated the last resident from the Facility on or before April 30, 2021, and surrendered its license to the State of Illinois on or about May 1, 2021.

8. On June 15, 2021 (“Petition Date”), Debtor filed a petition for relief under Chapter 7 of the United States Bankruptcy Code. *See* Doc. 1.

9. In order to be paid the HUD mortgage insurance for the Debtor’s default, on June 11, 2021, four days prior to the Petition Date, Greystone filed an Assignment of Mortgage in favor of HUD, recorded in the Office of the Recorder for Madison County, Illinois, as document number 021R24899. *See* Exhibit H1. A corrected version was filed thereafter as document number 2021R33334. *See* Exhibit H2.

10. In addition to filing the Assignment of Mortgage, Greystone assigned to HUD its interest in all the mortgage debt collateral, including but not limited to the Security Agreement, the DACA, and UCC Financing Statements, to which HUD is already an additional secured party. *See* Exhibit I.

11. HUD is the mortgagee of record and is secured in, *inter alia*, accounts receivable and real property. The Debtor has made no mortgage payments to HUD since Greystone’s assignment of the debt and collateral to HUD.

12. Debtor’s filing estimates the combined value of the Facility and the additional collateral securing the mortgage at \$7,370,000.00. *See* Schedule A/B line 92.

13. On the Petition Date, the Debtor owed an unpaid principal balance on the now HUD-held, non-recourse mortgage of \$10,970,363.02, including a pre-petition arrearage of \$1,688,104.05. *See* Schedule D.

14. Cause therefore exists under 11 U.S.C. § 362(d)(1) because the Debtor has failed to comply with the terms of its note and mortgage. “[T]he failure to make mortgage payments

constitutes ‘cause’ for relief from the automatic stay and is one of the best examples of a ‘lack of adequate protection’ under Section 362(d)(1) of the Bankruptcy Code.” *In re Sterling*, No. 14-12608-SHL, 2018 WL 313085, at *5 (Bankr. S.D.N.Y. Jan. 5, 2018) (*quoting In re Schuessler*, 386 B.R. 458, 480 (Bankr. S.D.N.Y. 2008)); *see, also, In re Zeoli*, 249 B.R. 61, 63 (Bankr. S.D.N.Y. 2000).

15. HUD has both a statutory and contractual right to foreclose defaulted mortgages that it holds pursuant to the National Housing Act. HUD may dispose of the asset to satisfy the debt through nonjudicial means pursuant to the Multifamily Mortgage Foreclosure Act, 12 U.S.C. §3701 *et. seq.*

16. In accordance with S.D. Ill. LBR 4001, Movant states that to the best of its knowledge, information, and belief, there no other entities or parties that have a legal or equitable interest in the property which is the subject of the attached motion.

WHEREFORE, pursuant to 11 U.S.C. § 362(d) and Rule 4001(a), HUD prays this Court grant relief from the automatic stay to allow HUD to exercise its *in rem* rights on its collateral, that the Chapter 7 Trustee abandon the collateral, and for such other relief as is just and equitable.

UNITED STATES OF AMERICA

STEVEN D. WEINHOEFT
United States Attorney

s/ Adam E. Hanna

Adam E. Hanna
Assistant United States Attorney
United States Attorney’s Office
Nine Executive Drive
Fairview Heights, Illinois 62208-1344
(618) 628-3700
(618) 628-3810 (fax)
Email: Adam.Hanna@usdoj.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed with the Court's CM/ECF system on October 8, 2021 which will electronically serve a copy on all parties who have requested notice on the docket. The voluminous attachments were not served on all parties by mail, but are available upon request made to the undersigned attorney.

In addition, the undersigned certifies that the foregoing document were sent by First Class United States Mail on October 8, 2021 to the following parties at the address shown on the mailing matrix:

Faith Care, LLC	Fringe Benefit Group	Office Depot
ADP, Inc.	Frontier	Opal Crossno
AT&T	FRONTIER	Peggy Townsend
Accurate Biometrics	COMMUNICATIONS	Peter Hazen
Ameren Illinois	Gary Oestringer	Peter Pisaneschi
Anita Earnhart	Grainger	Phylis Pollo
Arlene Agne	Greystone	Phylis Reinneck
Belmont Koch	HSHS Medical Group	Pro-Alarm
Betty Kamm	Helen Mandeville	Professional Therapy
Beverly Fehrmann	Henrietta Knebel	Services
Bluff Equipment	Highland's Tru-Buy	RJ Kool Co.
Broadway Tire &	Hospital Sisters Health	Robert Schwarz
Battery	System	Rose Rehkemper
CC Food Mart	Imogene Holtgrave	Ruby Kersey
CC Food Marts	Iron Mountain	Ruth Zeisset
Charles Ziesset	Jan Wilsey	S. Horn Construction
Cheryl Prost	John Deere Financial	Shirley Bastilla
City of Highland	Johnson Controls	Shirley Trame
City of Highland, Illinois	Juanita Hediger	Sparlin Plumbing
Connor Company	June Bohnestiehl	Stephanie Bosslet
DMI Solutions	KCI USA	Symmetry Energy
Dex Media	Laverne Butler	Solutions
Diane Garrison	Linette Siever	Sysco Food Services
Direct Supply	Mabel Lang	US Foods Inc.
Donna Koch	Magnum Rotating &	United States Trustee
Dorothy Gorman	Pumps	Virgil Wilhelm
Elise McEvers	Marvin Hasenmeyer	Virginia Brown
Ergo Midwest Inc.	Mathias Klumke	Wayne Miles
Ethel Shipley	MatrixCare	Weeke Sales & Service
Evelyn Wilmann	Medi-Bill Systems	Donald M. Samson
Ferguson Supplies	Mediline Industries	Steven M Wallace
Florence Huelsmann	Melba Reinacher	

/s/ *Adam E. Hanna*
